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The Federal Status of Marijuana and the Policy Gap with States

Marijuana is a psychoactive drug that generally consists of leaves and flowers of the cannabis sativa plant. It is a Schedule I controlled substance under the federal Controlled Substances Act (CSA; 21 U.S.C. §§801 et seq.), and thus is strictly regulated by federal authorities. In contrast, over the last several decades, most states and territories have deviated from a comprehensive prohibition of marijuana and have laws and policies allowing for some cultivation, sale, distribution, and possession of marijuana.

Marijuana is the most commonly used illicit drug in the United States. According to data from the National Survey on Drug Use and Health (NSDUH), in 2024 an estimated 64.2 million individuals aged 12 or older used marijuana in the past year, and 44.3 million reported using it in the past month. The percentage of individuals 12 or older who reported past-month marijuana use gradually increased from 6.1% in 2008 to 15.4% in 2024—a time frame during which a majority of states repealed state criminal prohibitions on marijuana and allowed for its recreational and/or medical use. The rate of past-month marijuana use among youth (ages 12-17) was 6.0% in 2024 and since 2008 has fluctuated from a low of 6.0% (in 2023 and 2024) to a high of 7.9% (in 2011), while adult (ages 18+) use steadily increased—from 6.3% in 2008 to 16.3% in 2024.

Marijuana Control Under Federal Law

Due to marijuana's status as a Schedule I controlled substance, the CSA currently prohibits the manufacture, distribution, dispensation, and possession of marijuana except for use in federal government-approved research studies. Unauthorized activities may give rise to criminal penalties and other legal consequences. The CSA definition of "marijuana" was revised in 2018, with the removal of "hemp" (cannabis containing no more than a 0.3% concentration of the psychoactive compound delta-9-tetrahydrocannabinol [delta-9 THC]) from the definition. It was further revised in 2025 to refer to the concentration of *all* THC, not just delta-9-THC. In April 2024, the Department of Justice (DOJ) proposed to move marijuana from Schedule I to Schedule III under the CSA. For a discussion of the consequences of this potential schedule change, see the following CRS products: CRS Legal Sidebar LSB11105, *Legal Consequences of Rescheduling Marijuana* (December 22, 2025, version) and CRS In Focus IF12715, *Rescheduling Marijuana: Implications for Criminal and Collateral Consequences* (December 30, 2025 version).

State Cannabis Law and Policy Trends

It is increasingly common for states to have laws and policies allowing for medical or recreational use of marijuana—activities that violate the CSA. Evolving state-level policies on marijuana also include decriminalization measures.

Medical Marijuana in States

In 1996, California became the first state to amend its drug laws to allow for the medicinal use of marijuana. As of March 1, 2026, 40 states, the District of Columbia (DC), Puerto Rico, Guam, and the U.S. Virgin Islands have comprehensive laws and policies allowing for the medicinal use of marijuana. Eight additional states allow for "limited-access medical cannabis," which refers to low-THC cannabis or CBD oil. Idaho, Kansas, and American Samoa do not allow for the use of medical marijuana or low-THC cannabis.

Current federal law does not recognize the distinction some states make between the medical and recreational uses of marijuana. Marijuana's classification as a Schedule I controlled substance reflects a finding that marijuana has a high potential for abuse and no currently accepted medical use in the United States. Moving marijuana from Schedule I to Schedule III, without other legal changes, would not bring the state-legal medical marijuana industry into compliance with the CSA. If marijuana were moved to Schedule III, it could theoretically be used for medical purposes consistent with federal law. However, Schedule III controlled substances may only legally be dispensed pursuant to a valid prescription and, as discussed below, marijuana is not currently a prescription drug approved by the Food and Drug Administration (FDA).

Recreational Marijuana in States

Recreational marijuana legalization measures remove state-imposed penalties for specified activities involving marijuana and allow for its non-medical use by adults. As of March 1, 2026, 24 states, DC, Guam, and the Northern Mariana Islands have enacted laws allowing for the recreational use of marijuana. State recreational marijuana initiatives have legalized the possession of specific quantities of marijuana by individuals aged 21 and over, and (with the exception of DC and the states that only recently enacted these measures) established state-administered regulatory schemes for the sale of marijuana. Activities related to recreational marijuana are illegal under the CSA and would remain so if marijuana moves to Schedule III.

Decriminalization

Over the last 50 years, many states and municipalities have decriminalized marijuana. Marijuana *decriminalization* differs markedly from *legalization*. A state or municipality decriminalizes conduct by removing the accompanying criminal penalties or by lowering them (e.g., making covered conduct a low-level misdemeanor with no

possibility of jail time). Civil penalties may remain (e.g., someone possessing marijuana may receive a ticket with a fine).

Marijuana as Medicine and Federal Involvement

Under federal law, a drug must be approved by FDA before it may be marketed or prescribed in the United States. To date, FDA has not approved a marketing application for marijuana for the treatment of any condition; however, FDA has approved one cannabis-derived drug and three marijuana-related drugs that are available by prescription. Epidiolex, which contains CBD as its active ingredient, is approved for the treatment of seizures associated with two rare and severe forms of epilepsy.

FDA has also approved two drugs containing synthetic THC (Marinol [and its generic versions] and Syndros) and one drug containing a synthetic substance that is structurally similar to THC but not present in marijuana (Cesamet). These products are used to treat nausea and vomiting caused by chemotherapy as well as loss of appetite for individuals with human immunodeficiency virus or HIV. Additional drugs containing marijuana-derived THC and CBD are reportedly being developed.

Federal Regulation of Marijuana Research

The process for getting approval to conduct research with marijuana involves both the Drug Enforcement Administration (DEA) and FDA. Before conducting research with marijuana, an investigator must obtain a DEA registration, FDA review of an investigational new drug application or research protocol, and marijuana from a DEA-registered source.

The Medical Marijuana and Cannabidiol Research Expansion Act (P.L. 117-215) imposed new requirements on DEA to expedite registration for marijuana researchers and required the Department of Health and Human Services to report on the therapeutic potential of marijuana for various conditions such as epilepsy, as well as on marijuana's effects on adolescent brains and on users' ability to operate a motor vehicle. Further, the HALT Fentanyl Act (P.L. 119-26) contained provisions meant to streamline Schedule I controlled substance research, including marijuana research.

Federal Response to State Divergence

Although state laws do not affect the status of marijuana under federal law or the ability of the federal government to enforce it, state legalization initiatives have spurred a number of questions regarding potential implications for federal laws and policies, including federal drug regulation and access to banking and other services for marijuana businesses. Thus far, the federal response to states' legalizing marijuana largely has been to allow states to implement their own laws. DEA has nonetheless reaffirmed that marijuana growth, possession, and trafficking remain crimes under federal law irrespective of states' marijuana laws. Federal law enforcement has generally focused its efforts on criminal networks involved in the illicit marijuana trade.

Federal banking regulators have yet to issue any formal guidance in response to state and local marijuana legalization efforts. Available guidance includes February 2014 Treasury Department Financial Crimes Enforcement Network guidance on financial institutions' suspicious activity report requirements when serving marijuana businesses. For broader discussion of this issue, see CRS Legal Sidebar LSB11076, *Marijuana Banking: Legal Issues and the SAFE(R) Banking Acts* (November 15, 2023, version).

Limiting Federal Enforcement in States: Directives Through Federal Appropriations

In each fiscal year since FY2015, Congress has included provisions in appropriations acts that prohibit DOJ from using appropriated funds to prevent certain states, territories, and DC from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana" (for the most recent provision, see Section 531 of P.L. 119-74). On its face, the appropriations rider bars DOJ from taking legal action against the states directly to prevent them from promulgating or enforcing medical marijuana laws. In addition, federal courts have interpreted the rider to prohibit certain federal prosecutions of private individuals or organizations that produce, distribute, or possess marijuana in accordance with state medical marijuana laws (however, it poses no bar to federal prosecution of activities involving recreational marijuana).

Selected Issues for Congress

Given the current marijuana law and policy gap between the federal government and most states, there are a number of issues that Congress may address. These topics include, but are not limited to, marijuana's designation under the CSA, financial services for marijuana businesses, federal tax issues for these businesses, oversight of federal law enforcement and its role in enforcing federal marijuana laws, and states' implementation of marijuana laws. Congress has raised these issues in hearings, through appropriations, and in bills introduced over the last decade.

In addressing state-level legalization efforts, Congress could take several approaches. It could take no action, in which case DOJ may move marijuana from Schedule I to Schedule III. Congress could also enact marijuana legislation before or after DOJ acts on rescheduling. Such legislation might take the form of more or less stringent marijuana control, ranging from requiring federal law enforcement to dismantle state medical and recreational marijuana programs, to limiting federal marijuana regulation through means such as appropriations provisions, to rescheduling or de-controlling marijuana under the CSA. This last option would largely eliminate the gap with states that have authorized recreational and comprehensive medical marijuana; however, concerns about the United States' compliance with international treaty obligations in regard to marijuana control may remain. As Congress considers these questions, states may continue to act on marijuana legalization. No state has reversed its legalization of either medical or recreational marijuana at this time.

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